State of New Hampshire
OFFICE OF ATTORNEY-GENERAL

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August 5, 1957

Kenneth L. Cowan, Director
Division of Inheritance Taxes
State Tax Commission
Concord, New Hampshire

Re: Estate of Grant C. Eastman

Dear Mr. Cowan:

The above-entitled estate raises the question, as set forth in your letter of June 25, 1957, whether the surviving tenant in a joint savings bank account may renounce or disclaim that part of the account which was contributed by the deceased, while retaining the portion which resulted from his own contributions. With reference only to the inheritance tax aspect of the question we answer in the negative.

The present case involves a joint tenancy in a savings bank account which was created by equal contributions from each tenant. One tenant having died, the survivor would disclaim the share contributed by the deceased, with the result that such share would fall into the residue of the decedent's estate. The survivor would retain the remaining one-half of the account, being the amount contributed by her. The parties are in a non-exempt class with respect to each other, while the takers of the residuary estate are in the privileged class with respect to the decedent. The entire effect of this transaction insofar as the inheritance tax is concerned would be to relieve the joint account from the tax to which it otherwise would be subject. See RSA 86:8-9.

It may be thought that the case of Bradley v. State, 100 N.H. 232, is determinative of the matter and would permit the suggested arrangement. A close examination of the opinion in that case, however, discloses that it turns upon very special facts. First, of course, the renunciation there was complete. Second, the surviving tenant had made no contributions to the account and third, the survivor was unaware of the creation of the joint estate. In such circumstances, it was deemed proper that the surviving joint tenant should have the opportunity to decide whether or not to concur in the creation of the joint account.

The present case makes pertinent a consideration of the following language:

> "When [a joint tenancy in a bank account] exists, either by gift or by contract, the rights of the survivor do not spring into being because of the death of the other tenant but arise by virtue of the rights created and existing during the lifetime of the payees . . ." Cournoyer v. Bank, 98 N.H. 385, 387-388.

The distinction between Bradley and the present case becomes clear. In the present matter, the contract was in existence and assented to by the survivor during the lifetime of both joint tenants. Such was not the case in Bradley; and it is clear that the lack of assent on the part of the survivor in that case was of material weight in the decision of the Court.

The contractual rights arising out of the joint tenancy having been fixed and in existence prior to and at the moment of the death of the decedent, the principles of disclaimer or renunciation as set forth in Bradley are not, in our judgment, applicable. The entire joint estate became vested in the survivor by operation of law, and while the contribution made by the deceased may be assigned to his estate by the independent action of the survivor, the tax consequences arising from the existence of the joint tenancy at the time of death cannot be avoided.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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